



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

May 13, 2021

Karen McKim
1519 Regency Ridge
Waunakee, WI 53597

Maribeth Witzel-Behl
City of Madison – Clerk
210 Martin Luther King Jr. Blvd, Room 103
Madison, WI 53703

**Re: Complaint Filed with Wisconsin Elections Commission
EL 20-24 (Karen McKim v. City of Madison, Maribeth Witzel-Behl)**

Dear Complainant McKim and Respondent Witzel-Behl:

I am in receipt of the complaint filed with the Wisconsin Elections Commission (“WEC” or “Commission”) against the City of Madison and Clerk Maribeth Witzel-Behl, received on November 9, 2020. The administrative rules governing the WEC’s processing of complaints require that I review the complaint and determine whether it is sufficient as to form and states probable cause. Wis. Admin. Code § EL 20.04(1). I am writing to inform you that I have determined that the complaint is not in proper form as you are not an elector in the City of Madison, and you are, therefore, not a proper party to filing a complaint with our office under Wis. Stat. § 5.06. As such, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Sufficiency as to Form

Wis. Stat. § 5.06(1) states:

Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate. (Emphasis added)

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

You state in your sworn complaint that your address is in Waunakee, therefore you are not an elector that is served by the City of Madison. Under Wis. Stat. § 5.06, only an “elector” of a jurisdiction or district may file a complaint.

Conclusion

I am returning the complaint, without prejudice pursuant to Wis. Admin. Code § EL 20.04(3), as it is not sufficient to form. As required by that provision, I have specified the defects in the complaint (form). As to the information which would be appropriate to cure the defect, only electors that reside in a municipality served by the individuals named may file a complaint under Wis. Stat. § 5.06. Since the complaint is improper as to form and does not state probable cause as to a violation of law under the authority of the Commission, the complaint has not been accepted as proper by the Commission under its administrative rules.

That said, Commission staff spent a great deal of time contemplating whether there was an alternative form of response that would be proper under the law, given that a formal decision cannot be rendered. Unfortunately, it would exceed our statutory authority to provide the formal, written response contemplated in Wis. Stat. § 5.06 if the complainant has not met the requirements for sufficiency as to form. There is also no precedent for such a response. Despite that, Commission staff would like to assure you that your complaint has prompted further consideration of the practices associated with ExpressVote ballot marking devices. This matter was also discussed with City of Madison staff, and they assured us that your concerns have already been addressed within their elections training practices. Additionally, the Commission has received copies of all complaint materials submitted, and they are aware of the specifics of the issues you have raised.

The Commission now considers this matter closed.

Sincerely,

A handwritten signature in black ink that reads "Meagan H.M. Wolfe". The signature is written in a cursive style with a large, looped initial 'M'.

Meagan Wolfe
Administrator
Wisconsin Elections Commission

cc: Members, Wisconsin Elections Commission